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SIPDIS

DEPT FOR EUR/SE - GOODMAN, SCARLATELLI; DEPT FOR  
EEB TPP/IPE - JURBAN; DEPT PASS TO USTR - JENNIFER GROVES,  
LESLIE YANG; DEPT PASS TO USDOC - HILLEARY SMITH; DEPT PASS  
TO USPTO - MICHAEL SMITH

E.O. 12958: N/A

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SUBJECT: 2009 SPECIAL 301 REVIEW - GREECE

REF: A. ATHENS 1360

[¶](#)B. ATHENS 1456

[¶](#)C. BOUZIS-ARGIROPOULOU 09-03-2008 EMAIL

[¶](#)D. GREECE'S FEBRUARY 2009 - COMPREHENSIVE ACTION PLAN

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## Summary

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[¶](#)11. (SBU) The Greek Government - particularly the Ministry of Foreign Affairs (MFA) - responded to Greece's placement on the U.S. Special 301 Watch List in 2008 with a genuine effort to understand and begin addressing USG concerns. It has welcomed enhanced dialogue with a range of USG agencies, including State, the Department of Commerce, its U.S. Patents and Trademark Office (USPTO), USTR, as well as post. As a result of this attitude, USG and industry groups have observed greater receptivity from the Greek Government to constructive engagement on IPR.

[¶](#)12. (SBU) The most significant milestone reached this year was the MFA's establishment of an Interministerial Coordinating Committee (IMC) on IPR convened under the leadership of the Secretary General for International Economic Affairs. This Committee convened five times over the course of the year and published in February 2009 a comprehensive summary of GoG efforts to support IPR as well as an Action Plan outlining a range of actions the GoG is contemplating for the future.

[¶](#)13. (SBU) This cable focuses on the results of the USG's IPR engagement with Greece, keyed to action areas highlighted by the USG's Special 301 Initiative Document. In spite of the good work of the IMC, we still believe it would be premature to remove Greece at this time from the Special 301 list. As impressive as Greek efforts were this year, they were uneven, a fact even the GoG itself recognizes in the Action Plan. The Plan clearly states the need for the GoG to improve existing measures to eradicate product piracy and counterfeiting and "...reach a higher level of coordination among the law enforcement authorities." We can best support Greece by acknowledging its efforts, prominently represented by the Action Plan and by, most importantly, encouraging the GoG to implement the Plan's suggestions. End Summary.

## The 301 Special Initiative and Greece's Response

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[¶](#)14. (SBU) The USG heightened its engagement with the GoG on IPR issues in 2008. In September 2008, visiting USDOC Hilleary Smith and A/Dep EconCouns passed to the GoG a "Special 301 Initiative" document consisting of a list of

steps derived from previous recommendations on how Greece could demonstrate that it has improved the protection and enforcement of IPR (reftel C). These steps evolved from discussions and consultations with the GoG and rights holders in the Economic and Commercial Cooperation Commission (ECCC).

**¶5.** (SBU) The MFA responded in September 2008 that they would consider how best to react to these measures. The National Action Plan (NAP) was apparently drafted with the Special Initiative in mind, placing an emphasis on gathering and processing statistical data, raising public awareness, and increasing training for judiciary and law enforcement authorities. The Plan is an achievement, given the difficult context of the competing political and commercial priorities of virtually all stakeholders, which so often undermine national strategic goals in Greece, including IPR.

## **¶II. Background on the Inter-Ministerial Committee**

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**¶6.** (SBU) In order to increase senior-level attention to IPR issues, the GoG created the IMC in April 2008 pursuant to a Ministry of Foreign Affairs (MFA) decree. Originally, IPR issues were discussed informally and at an ad-hoc basis by an OPI-initiated Athens Task Force, first established in 2006. The IMC, which held its first meeting in May 2008, is chaired by the Secretary General of the MFA's General Secretariat for Economic and Commercial Affairs. Members at the SecGen level include the Ministries of Development, Culture, Interior, Justice, Customs, and Finance. The IMC coordinates the National Action Plan (NAP), enforcement, and reporting on statistics. The IMC finalized the NAP on February 19, 2009.

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**¶7.** (SBU) The IMC created a working-level group (WLG) that met five times, beginning in September 2008. The IMC tasked the working-level group (WLG) with studying Greece's current legal framework, registering problems and presenting proposals on how to face these problems, and compiling a comprehensive action plan. MFA representative Christina Argiropoulou said the IMC took industry input into consideration as it conducted its work. At the same time, industry is concerned that the newly-formed IMC does not include them in their meetings, unlike the original Athens Task Force on IPR.

## **II. Coordination of Enforcement Efforts: Mixed Units Approach**

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**¶8.** (SBU) -- THE PLAN ON ENFORCEMENT: The Action Plan, in of itself, is a first step towards the coordination of enforcement efforts. By outlining the role of each pertinent GoG body, both policy and ground enforcement, the GoG assigns accountability for the activities associated with the enforcement and protection of IPR in Greece. The GoG is examining "alternative methods on enhancing coordination between Law Enforcement Authorities" especially the use of mixed units, also called joint enforcement teams comprised of the Municipal Police and the tax police (YPEE) from the Ministry of Economy and Finance. Below, we discuss the results from the mixed units in Athens and Thessaloniki. We encourage strengthening and standardizing the operations of these units.

**¶9.** (SBU) -- RESULTS OF MIXED UNITS OVERALL AND IN ATHENS: The local representative of the Motion Picture Association of America (MPAA), EPOE, reports that the municipal police do not fully participate in the mixed units and often do not take their responsibility to confiscate counterfeit goods in a serious manner. This is likely stymied by bureaucratic requirements, such as the need for an interagency destruction committee to inventory and oversee the destruction of

counterfeit goods. Post has also received reports that the unarmed municipal police do not apprehend street vendors for fear of attack or reprisal. (Note: The Greek public remains vehemently opposed to IPR enforcement activities. End Note.)

At this time, the jurisdiction of these units is limited to the borders of the Municipality of Athens with a "special emphasis, as expected, on the Historical Center of Athens" (reftel D). (Note: This is where the most egregious examples of IPR violations can be found. End Note.)

**¶10.** (SBU) -- RESULTS ON MIXED UNITS IN THESSALONIKI: In Thessaloniki (Greece's second largest city), we have not seen evidence of mixed-unit law enforcement efforts. Senior police officials have assured us, however, that the municipal police, special control unit officers (YPEE) and Hellenic (regular) police do cooperate on an ad hoc basis to fight street vendors selling counterfeit CDs, DVDs, and other goods. At a February 2008 meeting, representatives of Thessaloniki municipal police, Hellenic Police and YPEE told the Senior First Instance Prosecutor of Thessaloniki and representatives of MPAA and ConGen Thessaloniki, however, that they lacked clear instructions from "political authorities" on how they should conduct mixed unit patrols against street vendors and sales of counterfeit goods.

**¶11.** (SBU) -- RESULTS ON ENFORCEMENT IN THESSALONIKI: Greek political and police officials have expressed a range of reasons they are unable adequately to enforce IPR provisions of Greek law. These reasons include the lack of personnel and resources to conduct mixed unit patrols on any regular basis. The Mayor of Thessaloniki told ConGen officials in March 2008 the municipal police force is too small to devote significant time to catching illegal vendors, and that improved enforcement would require more help from Hellenic Police. Senior Hellenic Police officials have expressed concern about a public backlash against arrests of street vendors, since the public sympathizes with the young immigrants who comprise the majority of vendors. Some Thessaloniki municipal police have told us that they lack not only weapons but also the speed and stamina necessary to catch vendors, who usually run away when they see police approaching. ConGen has seen on one occasion two municipal police running for over two blocks, but failing to catch a youthful vendor carrying stacks of DVDs and CDs in both hands.

**¶12.** (SBU) Sometimes individual Greek officials make a

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concerted effort to address IPR enforcement problems, only to move on to other postings. First Instance Prosecutor of Thessaloniki Vassilis Floridis took an active interest in IPR enforcement in 2008. He wrote letters to the Mayor and head of northern Greek police urging them to enforce IPR-related laws and decrees, including with mixed unit patrols. He also made public statements calling for police to arrest vendors of counterfeit and pirated goods. The Prosecutor submitted a proposal for the creation of a new financial police force that (unlike the municipal police) would have the authority to make arrests and that would be dedicated to fighting IPR and other economic crime. He was transferred at the end of 2008 to another position with no authority for pursuing such initiatives. Two local business chambers wrote letters and made public appeals in 2008 calling on municipal and police authorities to stop street vendors.

### III. Regular Updates to USG on Statistical and Qualitative Updates

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**¶13.** (SBU) While we have been impressed by the GoG's enhanced attention to IPR issues in 2008, the GoG has not helped itself by severely controlling information flow on IPR developments. In several attempts by Post to obtain updates on progress, MFA officials responded that they required clearance from the IMC before releasing any details on Action

Plan developments to the USG. Obtaining this information almost inevitably requires senior-level approaches. From time to time, the MFA and other GoG bodies have provided general highlights on broader IPR issues, which have been reported by Post.

**¶14.** (SBU) The GoG has a poor record of collecting and disseminating statistics on IPR violations. In his presentation to the July 2008 ECC, Secretary General Skylakakis highlighted the importance he ascribed to addressing this problem. This issue remains a sensitive one. As reported in the previous year, the GoG does not have a single source of information for IPR-related statistics. The Ministry of Justice does not keep a comprehensive database regarding prosecutions and penalties for IPR violations. Rather, the Hellenic Copyright Organization (OPI) gathers all copyright cases and maintains a database of copyright infringements fed in by law enforcement authorities on an ad hoc basis. The police are required to submit lengthy and detailed information on the names of all the CDs and movies confiscated. Reportedly, the police are less likely to submit this time-consuming information if a large number of products is confiscated. OPI said that it was reviewing offers from companies who could handle the electronic management of the database. Separately, the MFA reported in December that it was applying for EU funding to compile a statistical database of IPR cases in order to better punish repeat offenders.

**¶15.** (SBU) In spite of these ongoing difficulties, the Action Plan submission represents an important step forward as it conveys a range of important, if still incomplete, statistical information on IPR seizures and other data. According to the statistics provided by the GoG on enforcement, we noted the following information on IPR confiscations and cases in 2008:

- mixed-units (municipal and Hellenic police forces) made 774 confiscations with almost 47,000 euros of fines,
- municipal police made 357 confiscations, including 50,100 CDs, 14,150 DVDs, and 16,500 handbags,
- customs confiscated 83 cases containing 855,784 goods, and

-- Hellenic Police dealt with 1,116 cases of IPR violations of DVDs and CDs.

#### IV. Public Awareness Efforts

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**¶16.** (SBU) OPI can be credited with the majority of public awareness efforts in Greece, which are targeted to a broad audience of youth, academics, civil servants, and businesses entities. OPI has used media outreach, internet, brochures, and conferences to highlight IPR issues and raise awareness among Greek communities. Post commends these efforts and believes that continued campaigns, together with greater enforcement, can generate greater understanding of and respect for IPR, especially among the youth, who are the highest users of internet and the target market for illegally

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copyrighted material. OPI's public outreach efforts in 2008 included presentations and conferences at universities, online and print educational guides on IPR, and various IPR-awareness raising events.

#### IV. Foster Cooperation between ISPs and Rights Holders

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**¶17.** (SBU) The GoG expresses in the Action Plan the difficulties it is having in addressing internet piracy. It notes, for instance, that strict data-privacy laws prevent the GoG from actively pursuing Internet service providers to target copyright infringers. (Note: Greece has a sensitivity to the collection of personal information due to its period under a military dictatorship from 1967-1974. End

Note.) ISPs are legally prohibited from disclosing their subscribers' names or physical addresses without a court order. Greek ISPs do not cooperate with right holders group for fear of losing business. For its part, industry continues to encourage a graduated-response program to shut down accounts without the need for releasing personal subscriber information. The Association of Greek Producers of Phonograms (IFPI) reports that the Vice-Chairman of the Greek National Regulating Authority promised to schedule a meeting with the ISPs and copyright organizations to discuss the issue. We believe this problem will continue to plague the GoG. According to industry reports, the downloading of illegal software and copyrighted content is anticipated to increase as internet penetration rises. At present, 35 percent of the population, or 3.8 million people, use the internet, a low figure by EU standards.

¶18. (SBU) The MPAA was one of the industry organizations closely following the ISP issue; however, Post was informed that the MPAA plans to shut down its offices in 11 countries, including Greece, due to budget constraints. The MPAA has decided to focus on anti-camcording legislation in key target markets. As a result, we believe that this will limit industry's ability to liaise with ISPs on this important issue.

#### VI. Increase Judicial Training

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¶19. (SBU) The Greek Government has worked hard to raise awareness of judges to IPR issues. In particular, OPI co-organized with Post a February 20 USPTO-roundtable in Athens on the enforcement of copyright law. Over 35 judges participated in the roundtable, with over 15 judges from outside of Athens. This is the second in a series of events designed to sensitize judges to the challenges and issues involved in copyright law. In June 2008, USPTO and OPI organized an international conference on the topic of "Copyright Policies and the Role of Stakeholders". The event included representatives from the EU and European universities. The MFA has also planned an upcoming IPR conference in April for prosecutors on copyright law. Post views these events as a positive effort on the part of the GoG to bring attention to IPR issues.

#### VII. Administrative Fines and Confiscation Measures

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¶20. (SBU) While the GoG has begun the limited imposition of administrative fines, it faces ongoing challenges in standardizing fines. As we discuss in paragraph 26, the GoG has had better success with administrative fines in business software. In 2008, OPI collected data on 400 infringements engendering fines across the board, as announced by the control services, also known as the tax police, who have the responsibility for imposing fines. Industry reports that suspects prefer to ask for a trial, which takes several years to resolve, rather than agreeing to pay a standard fine. MPAA's Greek representative (EPOE) has also complained to post that Greek judges have not yet applied industry's recommendations to use standard and deterrent penalties to copyright cases in their courtrooms. In general, Greek judges tend to issue light penalties resulting in suspended sentences. EPOE believes the use of standard penalties would send a strong signal to would-be infringers of potential punishment. As reported above, OPI is the only source for the collection of data on GoG's imposition of administrative fines and it relies heavily on the information provided by law enforcement authorities.

#### VIII. Enforcement and Prosecution of Penalties

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¶21. (SBU) Industry continues to highlight that Greek courts

do not adequately enforce copyright law. At a February 20 USPTO-funded judicial roundtable, Greek judges complained of an enormous backlog of cases and were impressed to hear from visiting U.S. Judge Michael Chagares that only 10 percent of cases in the U.S. court system actually go to trial. They explained to Judge Chagares that all of their cases go to trial which contributes to the congestion and backlog of cases in the court system. Greek judges also said that they were less inclined to apply deterrent penalties to the poor immigrants that appear in their court rooms, whom they perceive to be single-operators trying to feed their families. Defendants that face more severe penalties tend to pursue tactics such as filing an appeal or not appearing for their scheduled hearing, further delaying a decision on their sentencing.

## IX. Building up Capacity and Training Law-Enforcement and Customs

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¶22. (SBU) Greece places a priority on training enforcement authorities. The NAP outlines a plan to train 200 police officers on the topic of "financial crime" in which IPR is to be included. In addition, the Customs Services has identified three programs on IPR to be included into the program of the Ministry of Finance Training School (SEYYO) while the tax police (YPEE) submitted a proposal for an individualized program on "Protection of IPR" in regional areas of Greece. In 2008, YPEE worked with OPI and BSA to provide training to enforcement authorities on illegal software and IPR protection. IIPA identified the area of IPR training and education as a key area for positive collaboration between industry, the USG, and the GoG. In April 2008, OPI co-organized with ConGen Thessaloniki an educational seminar on counterfeited goods to law enforcement authorities.

¶23. (SBU) Within the Special Initiative, the Hellenic Customs Service are asked to work toward effectively controlling the import of pirated and counterfeit goods and regularly engage with neighboring countries. As a result, the GoG has indicated in its Plan that special customs control units should be responsible for activities on the border.

## IX. Combating Software Piracy

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¶24. (SBU) Of all its IPR-related efforts, the GoG's actions against software piracy appear to have been the most effective. As we discuss in the following paragraphs, their efforts have been concentrated in the private-sector, where they have succeeded in applying some administrative fines. The Special Tax Police (YPEE) provided the USG in September with a list of the number of investigations of the illegal use of software by private sector companies. According to Greece's national action plan, the YPEE, issued 224 orders in 2008 to audit companies using illegal software. 137 companies were reportedly investigated and 15 companies were found in breach of IPR laws. They sent two waves of letters in 2008 to small and medium-sized companies requesting that they provide information on their software use. YPEE evaluated the responses, and conducted an undisclosed number of raids followed the letters.

¶25. (SBU) Industry commends the GoG on their action and encourages them to continue the momentum on this issue. BSA has told us that such raids send a strong signal to the companies engaging in copyright infringement and has urged their increased use by the GoG. The International Intellectual Property Alliance (IIPA) praised YPEE's work in past years, stating in their submission, "BSA notes that the level of software piracy remains high, but has declined slightly in recent years (from 61 percent to 58 percent in 2008)...Much of this decline over the last few years may be attributable in part to the work of the Tax Police (YPEE) and their sending software audit letters to small- and medium-sized businesses in Greece." IIPA said YPEE could be

even more effective by imposing standard administrative fines.

¶26. (SBU) In general, administrative fines have been more difficult to impose across the board. As we noted in

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paragraph 20, suspects are able to get a stay of the imposition of these fines, by asking for a court case. The YPEE has had better success with the imposition of administrative fines on companies with pirated software. We will continue to follow up with BSA and the tax police on this information.

¶27. (SBU) Although the software piracy efforts have yielded the most results, they have been concentrated in the private-sector. The use of unlicensed software is widespread in the public sector, according to reports from industry, although some software companies reported to Post that they believe public procurement is conducted according to EU regulations, and is transparent, in theory. As reported in reftel A, YPEE has complained that it is not able to hold ministers accountable for violations in their ministries and it would take up extensive political capital and resources to undertake an audit of Greece's large bureaucracy.

¶28. (SBU) In a recent development concerning alleged public sector software piracy, a U.S. software firm in 2007 initiated a lawsuit against a Greek public sector organization, which allegedly replicated its software without obtaining the necessary licenses. In 2008, the Greek public sector organization counter-sued the company for making false and slanderous statements and for the malfunctioning of the software, asking for damages in excess of 100 times the amount specified in the original suit by the U.S. software firm.

Comment

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¶29. (SBU) While Post does not recommend that Greece be taken off the Special 301 list, it believes progress has been made over the past year. This should be recognized in the 301 report and other public statements. We must not underestimate the Ministry of Foreign Affairs' efforts spearheading the IMC, calling IMC meetings over five times in 2008, organizing a comprehensive and thorough report, essentially getting consensus from multiple agencies and ministries. Nevertheless, we believe it is important to see progress reflected in accurate, quantitative measurements of piracy.

¶30. (SBU) We are struck by the GoG's change in attitude in the NAP from previous years, as it openly admits concerns on its own IPR record and questions how best to move forward to implement a stronger IPR regime. The USG should take advantage of this opportunity by calling on the GoG in 2009 actually to implement the Action Plan. This includes: encouraging the Ministry of Justice to compile statistics and data on fines and sentencing on IPR cases; continued follow-up by the Tax Police on software piracy; and increased training of judicial and enforcement authorities.

¶31. (SBU) On this last item, we believe that USG should continue its support of workshops and roundtables of the judicial and law enforcement arms. Specifically, we could strengthen and regularize enforcement by hosting workshops for the joint action teams (police and municipality police). In addition, we believe we could support the GoG in increasing the effectiveness of the judiciary arm through an inter-governmental database, one that would collect statistical information on IPR violations as well as copyright cases, and could be used to track repeat offenders.

¶32. (SBU) In the same vein, it was a close call this year given the significant amount of work that Greece has done.

Greece deserves credit for its hard work in a politically contentious climate and should be encouraged to keep the momentum on this issue. If they are able to implement their National Action Plan, we should consider removing them from the Watch List. End Comment.

SPECKHARD